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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

LOW, LINDSAY M

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

03/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/564,979	Applicant(s) KUMAYAMA, MICHIIHITO	
	Examiner LINDSAY M. LOW	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 13 and 14 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on October 22nd, 2007.

Drawings

2. The drawings were received on October 22nd, 2007. These drawings are accepted.

Claim Objections

3. Claims 1 and 13 are objected to because of the following informalities: the reference letters "M" and "N" should be removed. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-2 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The lack of a spring between the operation handle and the connected staple assembly is considered new matter because it is not

supported by the original disclosure. It is acknowledged that the disclosure states on page 62 lines 1-11 that the spring that urges against the depressing operation is only one spring of the push-down twist coil spring 62. However, there is no mention of where there is a lack of a spring. In addition, the spring 62 as shown in Applicant's figures appears to be between the operation handle 60 and the connected staple assembly.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-2 and 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 states, "wherein said operation handle is without a spring between itself and the connected staple assembly." This phrase is unclear because as Applicant's Figure 1 shows, the present invention has a spring 62 that appears to at least partially be located between the operation handle and the connected staple assembly.

Claim 1 recites the limitation "said staple mount magazine dead center." There is insufficient antecedent basis for this limitation in the claim. Only an "upper dead center" has been previously recited.

Regarding claim 14, the limitation "a *first* traction coil spring" is recited. However, there only appears to be one traction coil spring claimed. Therefore, the term "first" is unclear. In addition claim 14 recites the limitations "the center" and "the first extension." There is insufficient antecedent basis for these limitations in the claims.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-2 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Polzer (1,962,874).

Claims 1-2 disclose the same invention as discussed in paragraph 14 of the previous office action mailed June 22nd, 2007.

Regarding the amendment to claim 1, note that at the connection point (vicinity of 26) of the operation handle 44 and the connection staple assembly, no spring is present. Therefore, the operation handle is without a spring between itself and the staples. In addition, Polzer's magazine 24 can be placed in a position where a lower end surface of the magazine contacts an upper end surface of the base.

Regarding new claim 13, the blade plate and handle move integrally together. In addition, when the lower end surface of the magazine contacts the upper end surface of the base, the magazine is prevented from further rotation. A blade holder guide projection 37 stops movement of the handle when it reaches the upper dead center of the vertical slit.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebihara (4,784,307) in view of Polzer (1,962,874) for the same reasons set forth in paragraph 16 of the previous office action, *supra*.

Regarding the amendment to claim 3, the feed mechanism includes a release lever rotating plate 42A mounted directly below the mount sensor 42. Note that the plate 42A acts as a rear sensor because it senses the passing of the rear end of the connected staple assembly cassette (and therefore the connected staple assembly) as discussed in col. 4 lines 11-23.

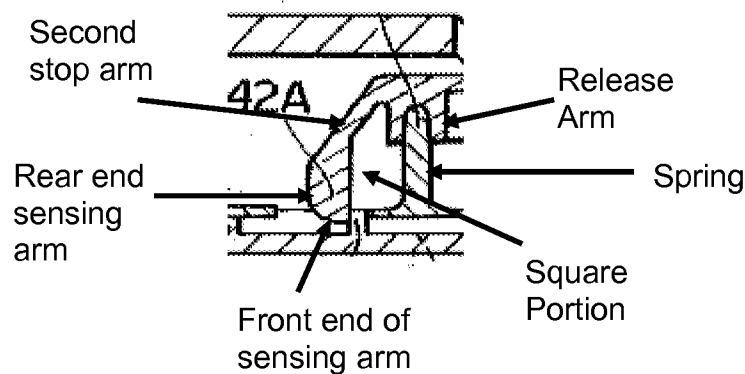
12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebihara (4,784,307) in view of Polzer (1,962,874).

Ebihara's release lever rotating plate 42A has a square portion located in the center as designated below. Note that because all of the parts are connected, the square portion is deemed to be secured to an extension of a first wall section. A rear end sensing arm extends vertically upward depending on the orientation of the stapler (upside down, etc.) and a front end projects into the advance passage. A second stop arm (designated below) is engaged with the rear end sensing arm and allows the

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mounting sensor 42 to be disengaged in a rotating direction. A release arm (see fig. below) includes a spring element 44.

Ebihara is silent about the spring element being a coil spring. However, the examiner takes Official Notice of the well known use of coil springs in the art for the purpose of effectively biasing parts in a stapler. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a coil spring for a spring element in Ebihara's device for the purpose of effectively biasing the mounting sensor.



Allowable Subject Matter

13. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

14. Applicant's arguments filed October 22nd, 2007 have been fully considered but they are not persuasive.

Applicant's arguments with respect to the lack of spring between the operation handle and the connected staple assembly are believed to have been addressed above.

Applicant contends that Ebihara's locking member does not have a structure being displaced and deformed by sensing presence or absence of the connected staple assembly. However, it should be noted that when the connected staple assembly cassette 26 is present in the staple mount magazine, the member 42 senses its presence (see col. 4 lines 15-22) and is displaced (rotated) and deformed (i.e. the spring element 44 is connected to the mount sensor 42 and deforms when the cassette is sensed).

For the reasons above, the grounds of rejection are deemed proper.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

16. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSAY M. LOW whose telephone number is (571)272-1196. The examiner can normally be reached on Monday thru Friday 7:30 to 5:00.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. M. L./
Examiner, Art Unit 3721
3/12/2008

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721